IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7348 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 NO

GUJARAT STATE ROAD TRANSPORT CORPORATION

Versus

JUSUB NATHA

Appearance:

MR HARDIK C RAWAL for Petitioner No. 1

MR VB GHARANIYA for Respondent No. 1

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 10/07/2001

ORAL JUDGEMENT

1. This petition under Article 227 of the Constitution seeks to challenge the award of the Labour Court, Rajkot in Reference (LCR) No.1521/88 under which the respondent is directed to be reinstated with 30% of

the backwages. After publication of the impugned award on 19.12.1990, the petitioner appears to have filed the petition on 12.3.1991 and moved it for admission on 8.4.1992. As stated at the Bar, the prayer for interim injunction against the order of reinstatement having been refused, the respondent is already reinstated and serving since about last ten years.

2. The respondent, a conductor under the petitioner Corporation, appears to have approached the Labour Court with the demand and dispute for his reinstatement with full backwages. During the course of checking of the bus in which the respondent was on duty on 14.8.1986, several irregularities were alleged to have been found and the respondent was chargesheeted for the misconduct alleged against him. The list of the alleged misconducts included non-issuance of tickets after collecting fare and interfering with the proceedings of the checking party. A regular departmental enquiry was held in which, only a reporter, from amongst the four officers of the checking party, was examined in evidence and the passengers, whose signatures were obtained on a statement, were not examined. The respondent himself was subjected to cross-examination and on the basis of such evidence, the enquiry officer had recorded the finding that the respondent was found to be guilty of misconducts for which he was chargesheeted. Accordingly, the respondent was dismissed from service and the reference of his demand and dispute had come to be made.

3. After appreciating the evidence on record, which included the record and proceedings of the departmental enquiry, the Labour Court has arrived at the findings of fact that the charges were not proved by sufficient evidence and, therefore, the order of reinstatement has been made. The learned counsel for the petitioner vehemently argued that the Labour Court has committed error in appreciating and weighing the evidence which was sufficient to prove the charges. It was submitted that the passengers who were supposed to have signed a statement were not required to be examined in view of the judgment of the Supreme Court reported in AIR 1977 SC 151 (STATE OF HARYANA v. RATAN SINGH). In order to see whether the charges were proved by sufficient evidence even in absence of examination of the passengers, the original record and proceedings of the Labour Court were called for. Even after going through the same, it appeared that the reporter, who was the only witness examined before the enquiry officer, had clearly stated in his cross-examination that he had no eye witness to testify to the charges levelled against the workman.

Besides that, there was documentary evidence of way-bill of the delinquent and it was found that the numbers were properly closed at the appropriate stage in the said way-bill. The learned counsel for the petitioner could not explain as to how non-issue of tickets could be inferred if the numbers were closed in the way-bill at the appropriate stage. Thus, in short, although perversity was sought to be attributed to the impugned award, insufficiency of evidence is not the finding which is contrary to the evidence on record. Therefore, there is no reason to interfere with the findings of fact as regards insufficiency of evidence.

4. Having come to the conclusion as above and having regard to the fact that the respondent is already reinstated since last ten years and also having regard to the fact that he is agreeable to forego the award of backwages, as stated by the learned counsel on instructions of the respondent who is present in the Court, the ends of justice would be met if the award is modified to that limited extent. Accordingly, the petition is partly allowed and the impugned award is modified to the extent that the respondent shall not be entitled to any backwages. Rest of the award would remain intact. Rule is made absolute to the aforesaid extent with no order as to costs.

Sd/-

10.7.2001 (D.H.Waghela, J.)

(KMG Thilake)